

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL
TUESDAY, MAY 6, 2008**

5 P.M. SPECIAL COUNCIL MEETING (Study Session) - Update on Boards and Commissions, including Recruitment and Selection Program, Review of Bylaws, and Promotion of Consistent Practices

7 P.M. REGULAR MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
Senior Assistant City Attorney Kathryn Berry
Assistant to Director of Parks and Recreation Cathy Merrill
Assistant to the City Manager Coryn Campbell
Superintendent of Field Services Jim Craig
Director of Community Development Hanson Hom
City Clerk Gail Borkowski

SPECIAL ORDER OF THE DAY

Recognition of Family Ambassador Program

PUBLIC ANNOUNCEMENTS

Councilmember Whittum announced the upcoming Sunnyvale Health & Safety Fair.

Linda Davis, League of Women Voters, announced upcoming candidate forums for the June 2008 election.

A member of the public spoke about "Blue Star Moms," which is a non-profit organization for mothers with children involved in the military. The program "Adopt a Military Mom for Mother's Day" is looking for community members to become involved with adopting a mom.

Councilmember Swegles stated he has already adopted a mom and encouraged the community and his colleagues to become involved with the program.

Councilmember Lee clarified that Blue Star means that a mother has a son or daughter serving in the military. Councilmember Lee explained the color of the star changes if a child passes away during their military service and the designation becomes Gold Star.

CONSENT CALENDAR

Councilmember Whittum pulled Items. 1.C. and 1.J.

Mayor Spitaleri stated Kevin Jackson requested to pull 1.J. also.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the Consent Calendar with the exception of Items 1.C. and 1.J.

VOTE: 7-0

1.A. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.B. RTC 08–142 List of Claims and Bills Approved for Payment by the City Manager – List No. 399

Staff Recommendation: Council reviews the attached lists of bills.

1.C. RTC 08–123 Award of Request for Proposals No. F0709-35 for a Solar Photovoltaic System at Fire Station No. 2 and Approval of Budget Modification No. 49 for Project Funding

Councilmember Whittum inquired what the downside would be to approving Alternative 2 which would move the expense into the next budget cycle.

Assistant to Director of Parks and Recreation Cathy Merrill explained that previous Council direction was given to consider proposed capital projects which would look at all the Tier 1 and Tier 2 capital projects identified in the *Carbon Dioxide Emissions Reduction planned for City Operations* report. Merrill stated one of the projects contained in that report is to consider solar photovoltaic systems at a number of buildings in the City.

Vice Mayor Hamilton explained that the recommendation page distributed on the dais had an error in the last sentence. The last sentence should state ...”annual savings per **month**” (not per year).

Councilmember Whittum verified with Merrill that the payback time of 18 years listed in the report was a comparison figure because it would be difficult to determine the exact payback time due to many variables.

Councilmember Whittum inquired if Alternative 2 would have the same payoffs, given the fact that quotes may change with any delay. Merrill agreed that quotes may change in addition to the availability of rebates and that would affect the payoff to some degree.

Councilmember Whittum stated that the staff recommended alternative uses reserves which imply that the budget for this project has been exceeded. Merrill stated that was correct.

Councilmember Lee explained that this was a pilot project undertaken last year to look at usage of photovoltaic in City operations. Councilmember Lee expressed his support for this item as a pilot project in which the results will be reviewed for possible future uses at City facilities, if the project is found to be successful.

Public comments opened at 7:20 p.m.

No speakers.

Public comments closed at 7:20 p.m.

MOTION: Councilmember Whittum moved to approve Alternative 2.

Motion dies for lack of second.

MOTION: Councilmember Lee moved and Councilmember Howe seconded to approve Alternative 1: Council approves Budget Modification No. 49 for \$142,660 and awards \$140,660 to Petersen-Dean Solar to install a solar photovoltaic system to serve Fire Station No. 2, and provides up to \$2,000 to a solar consultant, as determined by Facilities Services staff, to develop visual and written materials to educate the general public on the use of photovoltaic systems.

Councilmember Whittum stated he is opposed to the motion as the City is short of funds and there are many unfunded capital projects that would benefit the public directly instead of dipping into the budget for something that does not provide a public benefit.

Councilmember Howe explained the Council previously voted unanimously to move this project forward as a pilot project as an educational process for the City of Sunnyvale as well as the surrounding community. Council selected the central fire house due to the importance of this facility remaining operative in the case of an emergency by the installation of this system. Councilmember Howe stated this has been planned for a long time and although the money will come out of the City's reserves, it will be replaced next year. Councilmember Howe stated it is a matter of timing for this project and expressed his support that this item moves forward.

Councilmember Moylan explained how rebates shrink as time goes by which pushes the break-even point out into the future. There are scientific and budget reasons why this project should be accelerated.

Vice Mayor Hamilton stated she disagrees that this project will not directly benefit the City. Vice Mayor Hamilton stated as a part of Sustainable Silicon Valley, the City has made a commitment to reduce carbon emissions and this is the first step toward meeting that goal.

VOTE: 6-1 (Councilmember Whittum dissented)

1.D. RTC 08-137 Notice of Intent to Apply for, Accept, and Appropriate a Grant from the California Office of Traffic Safety in the Amount of \$26,500 for In-Pavement Crosswalk Lights and Budget Modification No. 48

Staff Recommendation:

- Council authorizes staff to apply for the Office of Traffic Safety grant funds for installation of in-pavement crosswalk warning lights on Cezanne Drive;

- Council authorizes acceptance of the grant in the amount of \$26,500, if the grant is awarded; and
- Council approves Budget Modification No. 48 to appropriate the monies to a capital project to fund the procurement and installation of the in-pavement crosswalk warning lights.

1.E. RTC 08-126 Fleet Services Budget Overrun in the Amount of \$270,000 Due to Increased Fuel Costs in Fiscal Year 2007/2008 and Approval of Budget Modification No. 52

Staff Recommendation: Council approves Budget Modification No. 52 in the amount of \$270,000 to increase the operating budget for Program 763 Provision of Vehicles and Motorized Equipment to cover the increase in fuel costs.

1.F. RTC 08-147 Accept and Appropriate Safe Routes to School Grant Funds in the Amount of \$295,600 for Citywide School Route Improvement and Budget Modification No. 47

Staff Recommendation:

- Council accepts and appropriates Federal Safe Routes to School Grant Funds in the amount of \$295,600 for city wide school route improvement projects; and
- Council approves Budget Modification No. 47 to appropriate the grant to a new project.

1.G. RTC 08-149 Receive Staff Report on Recent Emergency Bridge Repairs, Revise the Budget and Schedule for Wolfe Road Caltrain Overcrossing, Project 825620, and Approve Budget Modification No. 53

Staff Recommendation: Council approves revising the schedule and budget for Wolfe Road Caltrain Overcrossing, Project #825620, to begin in the current fiscal year, with a budget of \$2 million, along with approval of the related budget modification.

Contracts

1.H. RTC 08-141 Award of Bid No. F0703-75 for Roof Replacement at the Corporation Yard

Staff Recommendation:

- Council awards a contract in substantially the same form as the attached draft and in the amount of \$217,084, to Louis & Riparetti to replace the roofs on Fleet, the Meter Shop and Stores at the Corporation Yard; and
- Council approves a project contingency in the amount of \$26,050.

1.I. RTC 08-144 Award of Bid No. F0703-79 for Pavement Rehabilitation of Various Streets and Approval of Budget Modification No. 51

Staff Recommendation:

- Council awards a contract, in substantially the same form as the attached draft in the amount of \$1,328,157 to Top Grade Construction Incorporated for the Pavement rehabilitation of various streets;
- Council approves a budget contingency in the amount of \$199,224; and
- Council approves Budget Modification No. 51.

**1.J. ORDINANCE Adoption of Ordinance No. 2871-08 Amending Section 10.16.030 of
No. 2871-08 Chapter 16 (Parking Regulations) of Title 10 (Vehicles and Traffic) of
the Sunnyvale Municipal Code**

Councilmember Whittum stated although he will be supporting this motion, he wished to identify that the Bicycle and Pedestrian Advisory Commission (BPAC) was not able to incorporate this ordinance into an ongoing study as anticipated because the study had already been completed when they received this item. Councilmember Whittum stated he assumed that Council would support BPAC reviewing this ordinance and potentially sending it back to Council with some recommended changes if necessary, because there have been some concerns over the application of this ordinance and bicycle safety.

Public comments opened at 7:25 p.m.

Kevin Jackson, Bicycle and Pedestrian Advisory Commission member, speaking on his own behalf, asked Council to refer this item back to BPAC after it is approved for further analysis. Jackson explained that the commission's work on the Street Space Allocation Study was completed last month so incorporating this ordinance into that study was not possible. Jackson urged Council to include in their motion that this ordinance receive review by the BPAC after adoption.

MOTION: Councilmember Whittum moved and Vice Mayor Hamilton seconded to approve staff recommendation: Council approves second reading of Ordinance No. 2871-08.

Councilmember Moylan offered a friendly amendment to have BPAC review and revise the language of the ordinance after adoption and remove the special event issue from the emergency issue.

Senior Assistant City Attorney Kathryn Berry stated that the amendment could not be accepted as changes could not occur after the second reading of the ordinance. Berry explained that Council could refer this item to BPAC for language revision of the ordinance but there is a time limit if Council were to choose this option.

Councilmember Moylan stated this ordinance was a revision of a previous ordinance that had been around for some time. Councilmember Moylan verified that an ordinance can be revised and that Council could approve the ordinance this evening and then add a review of the ordinance to BPAC's work plan. Berry agreed that the ordinance could be added to BPAC's work plan after adoption by Council and that a future revision could occur. Councilmember Moylan stated that such action was the intent of this amendment and Councilmember Whittum accepted the friendly amendment.

Mayor Spitaleri verified with Councilmember Whittum that the ordinance at this time is not being amended.

City Manager Chan verified that the suggestion given by Councilmember Moylan will be a separate direction to staff. Staff will add review of this ordinance to BPAC's work plan.

Restated MOTION: Councilmember Whittum moved and Vice Mayor Hamilton seconded to approve staff recommendation: Council approves second reading of Ordinance No. 2871-08

with

Staff to add to BPAC's work plan to review and revise the language of Ordinance No. 2871-08 after adoption and review removing the special event issue from the emergency issue.

VOTE: 7-0

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 08-146 Positions on State and Local Ballot Measures for the June 2008 Election

Councilmember Swegles recused himself from this item as he is the Secretary/Treasurer for the League of California Cities Peninsula Division which supports Proposition 99 and he is also the President of Western Manufactured Housing Association of Silicon Valley which is supporting Proposition 98). Councilmember Swegles left the dais.

Assistant to the City Manager, Coryn Campbell presented the staff report.

Public hearing opened at 7:33 p.m.

Fran Hirsch passed out materials to Council. Hirsch stated the history of the eminent domain issue is missing from the staff report. Hirsch provided an explanation of the history of the domain issue to Council. Hirsch stated Proposition 99 does not affect Sunnyvale.

Councilmember Whittum verified that Hirsch favors that the City take no position on these propositions as it is not necessary for the City to take a position in this area. Whittum verified with Hirsch that she supports Alternative 3 which is not to take any action on these items.

MOTION: Councilmember Howe moved and Councilmember Whittum seconded to approve Alternative 3: Council takes no action.

Councilmember Lee stated he supports not having the City not take any action on these propositions.

Vice Mayor Hamilton stated she will oppose the motion as the City has voted to give itself the power of eminent domain and Council has a responsibility to their citizens to weigh in on this issue. Vice Mayor Hamilton stated eminent domain reform is needed in the City. Vice Mayor Hamilton stated these propositions do impact City services and Council should take a position.

Councilmember Moylan stated since City policies apply to the issue of eminent domain,

Council should endorse the proposition that does not have severe environmental concerns and was written in conjunction with many councilmembers and not for private groups interests. Councilmember Moylan stated that one of the propositions has to pass and he supports the staff recommendation to support Proposition 99 and oppose 98.

Councilmember Whittum stated he does not agree with telling residents how to vote and supports residents of the community deciding for themselves.

Mayor Spitaleri explained that the staff recommendation is supports having the City take a position on the propositions based on information given to the City by the League of California Cities. The staff recommendation is not meant to direct voters as to how they should vote.

Councilmember Moylan stated Council takes position on statewide issues if they apply to policies that Council has previously set and there is no implication that Council is suggesting the voters need Council's assistance to vote. Councilmember Moylan stated there is not an implied insult to voters when Council takes a position on a statewide issue.

VOTE: 3-3 (Councilmember Moylan, Mayor Spitaleri, Vice Mayor Hamilton dissented, and Councilmember Swegles recused).

Motion failed.

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to approve Alternative 1: Council adopts the following positions on the ballot measures:

State Ballot Measures:

Proposition 98: Eminent Domain. Limits on Governmental Authority. Initiative Constitutional Amendment: OPPOSE

Proposition 99: Eminent Domain. Limits on Governmental Acquisition on Owner-Occupied Residence. Initiative Constitutional Amendment: SUPPORT

Councilmember Howe inquired if this motion also fails would that be the end of this item. Senior Assistant City Attorney Kathryn Berry explained that Council could still take alternative action if this item fails; however, once an item has failed, that same motion would not come up again.

VOTE: 3-3 (Councilmembers Howe, Lee, Whittum dissented and Councilmember Swegles recused)

Motion fails.

Councilmember Moylan acknowledged Alternative 3 passed by default.

3. **RTC 08-148 Public Hearing to Defer Consideration of *Continuing Study Issue DPW 2C: Update of the Water Resources Sub-Element of the Environmental Management Element of the Sunnyvale General Plan* to a Study Session on June 3, 2008, and Subsequent Public Hearing at a Future Council Meeting**

Councilmember Swegles returned to the dais.

Superintendent of Field Services Jim Craig presented the staff report.

Public hearing opened at 7:47 p.m.

No speakers.

Public hearing closed at 7:47 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve staff recommendation: Council continues this item to Council Study Session on June 3, 2008.

VOTE: 7-0

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Swegles stated a committee that he once served on – the Water Emergency Transportation Authority Board of Directors – has re-activated the committee and a position is now open. The first meeting will be on June 18, 2008. Councilmember Howe requested this item be placed on the May 13, 2008 agenda in such a fashion that an appointment can also be made at that time.

Councilmember Lee thanked the Historic District Neighborhood Association along with the League of Women Voters for holding a candidates forum.

Councilmember Lee announced that absentee ballots and sample ballots were sent out this week. Councilmember Lee urged residents to vote in the upcoming election.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- RTC 08–143 Sunnyvale Stevens Creek Trail Update
- Draft Minutes for the Housing & Human Services Commission of April 16, 2008
- Study Session Summary – Seismic Safety and Safety Sub-Element

PUBLIC COMMENTS CONTINUED

Public comments opened.

Jeannie Bruins, resident of Los Altos, thanked staff for bringing the Sunnyvale Stevens Creek Trail Update report before Council. Bruins provided an update regarding the Los Altos feasibility study process. Bruins requested Council remain open to coordinating with adjacent jurisdictions regarding this issue. Bruins cited Council's 1994 policy which allows for coordinating with adjacent jurisdictions.

Councilmember Lee verified that Bruins is a resident of Los Altos and is the chair of the task force assigned to review the feasibility study.

Councilmember Moylan explained that he has met with the mayors of Los Altos and Cupertino on this subject. Councilmember Moylan explained that the Lower Peninsula Flood Control and Water Shed Advisory Committee received a presentation from the water district staff offering the use of their easement, the existing water district road, which may be useful and assist without needing to build anything in residents' backyards. Councilmember Moylan agreed that the cities do need to coordinate. Councilmember Moylan stated Council may have to reevaluate their 1994 Council policy and move forward with assisting with the Stevens Creek Trail as the trail is being used for community purposes. Councilmember Moylan stated outside of the water district road, it would not make sense to do creek alignments. Councilmember Moylan explained that he will do his best to assist with coordinating with other jurisdictions as needed and would also be interested in attending a joint meeting.

A member of the public spoke about the fees that the City charges when a resident wishes to appeal a decision. The member of the public stated this practice discourages residents from appealing an issue and recommended Council approve higher fees for the applicant, instead of charging a fee to appeal an item.

ADJOURNMENT

Mayor Spitaleri adjourned the meeting at 7:59 p.m.

Gail T. Borkowski
City Clerk

Date